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9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re:

12 THE RHODES COMPANIES, LLC, aka
13 “Rhodes Homes,” et al.,

14 Reorganized Debtors.

15 Chapter 11

16 Case No. BK-S-09-14814-LBR
17 (Jointly Administered)

18 **Trial Date: 3/5/2012**
19 **Trial Time: 9:30 a.m. (PST)**
20 **Courtroom 1**

21 Affects all Debtors
22 Affects the following Debtors

23 **JOINT PRE-TRIAL STATEMENT**

24 Pursuant to the Court’s Order Regarding Pretrial and Trial Matters, the above-captioned debtors
25 (collectively, the “Reorganized Debtors”), and the United States submit the following pre-trial
26 statement.

1 **I. Disclosures Required by Fed. R. Civ. P. 26(a)(3)**

2 Discovery in the above-captioned matter is currently ongoing, and the following lists of
3 witnesses and exhibits are based upon the best information currently available to the parties. The
4 parties reserve their rights to supplement these lists upon the completion of discovery.

- 5 **(i) the name and, if not previously provided, the address and telephone number of
6 each witness—separately identifying those the party expects to present and those it
7 may call if the need arises:**

8 The Reorganized Debtors expect to present at trial the following witness:

9 1. Dean Griffith

10 7540 Red Cinder Street, Las Vegas, NV 89131

11 The United States expects to present at trial the following witnesses:

12 1. Pamela Garner

13 4670 Hoeker Way, Las Vegas, NV 89147

14 2. James Garner

15 4670 Hoeker Way, Las Vegas, NV 89147

16 3. Sergio Juarez

17 2636 Bed Knoll Ct., Las Vegas, NV 89031

18 4. Marlene Marcus

19 1109 Sulpher Springs, Unit 101, Las Vegas, NV 89128

- 20 **(ii) the designation of those witnesses whose testimony the party expects to present by
21 deposition and, if not taken stenographically, a transcript of the pertinent parts of
22 the deposition**

23 No testimony is expected to be presented by deposition.

- 24 **(iii) an identification of each document or other exhibit, including summaries of
25 other evidence—separately identifying those items the party expects to offer
26 and those it may offer if the need arises.**

27 The Log of Exhibits the United States expects to offer at trial is filed herewith as

28 Attachment 1.

1 The Log of Exhibits the Reorganized Debtors expect to offer at trial is filed herewith
2 as Attachment 2.

3 **II. Concise Statement of the Nature of the Action and Contentions of the Parties**

4 On April 13, 2010, the IRS filed amended proof of claim No. 7-2 with regard to Bravo, Inc.
5 (hereinafter “Bravo”), one of the jointly administered debtors herein. The amended proof of claim
6 included federal employment tax liabilities for the quarters ending September 30, 2000, December 31,
7 2000, all four calendar quarters of the years 2001 and 2001, and the quarters ending March 31, 2003
8 and June 30, 2003. The proof of claim set forth an unsecured priority claim in the total amount of
9 \$1,326,068.11 and an unsecured general claim in the amount of \$2,560,388.64. On March 31, 2011, the
10 Reorganized Debtors filed an objection to the amended proof of claim. At issue in this proceeding is
11 who is responsible for paying the employment taxes set forth on the amended proof of claim.

12 The Reorganized Debtors contend that Bravo hired Union Pacific Construction (“Union
13 Pacific”) as a subcontractor for Bravo, and that Union Pacific—not Bravo—is the employer of the
14 laborers at issue. Accordingly, the Reorganized Debtors contend that Union Pacific alone is responsible
15 for the employment taxes set forth on the proof of claim. The Reorganized Debtors further contend that
16 they have produced sufficient evidence to rebut the allegations set forth in the proof of claim and,
17 accordingly, that the burden of proof reverts to the United States. Therefore, the Reorganized Debtors
18 contend, the United States must prove by a preponderance of the evidence that Union Pacific acted
19 merely as a payroll processor for Bravo and was not the employer of the employees at issue.

20 The United States contends as follows: During the periods at issue included on the proof of
21 claim, Bravo had an agreement with Robert Kahre for Kahre to provide payroll services for Bravo
22 employees. The Bravo employees that were paid through Kahre’s payroll system were hired by Bravo,
23 supervised by Bravo and provided with the materials to perform their work by Bravo. Under Kahre’s
24 payroll system no taxes were withheld from the employees’ wages; he did not provide the employees’
25 with a W-2 at the end of the year; and he did not file any quarterly employment tax returns with the
26 IRS. Although, the United States contends, Bravo entered into an agreement with Kahre to participate
27 in his fraudulent cash payroll system, that agreement does not relieve Bravo, the actual employer, of the
28 obligation to pay the employment taxes. The United States maintains that the Reorganized Debtors

1 have not come forward with evidence to show that the IRS' determination in this matter is arbitrary,
2 excessive or without foundation and therefore the burden of proof has not shifted to the United States.

3 **III. Statement of Jurisdiction**

4 This contested matter seeks disallowance of the IRS Claim under 11 U.S.C. § 502(b). It is a core
5 proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

6 **IV. Stipulated Facts**

7 1. On April 13, 2010, the IRS filed amended proof of claim No. 7-2 with regard to Bravo,
8 one of the jointly administered debtors herein. Bravo was previously in the business of framing houses
9 for the Debtors' various homebuilding operations.

10 2. The IRS amended proof of claim No. 7-2 included federal employment tax liabilities for
11 the quarters ending September 30, 2000, December 31, 2000, all four calendar quarters of the years
12 2001 and 2001, and the quarters ending March 31, 2003 and June 30, 2003 (hereinafter "the periods at
13 issue"). The proof of claim set forth a unsecured priority claim in the total amount of \$1,326,068.11
14 and an unsecured general claim in the amount of \$2,560,388.64.

15 3. On March 31, 2011, the Reorganized Debtors filed the Objection to Claim No. 7 Filed by
16 the Internal Revenue Service Against Debtor Bravo, Inc., etc.

17 4. On November 15, 2011, the United States' filed the Response in Opposition to Debtors'
18 Objection to IRS Claim Filed Against Bravo, Inc.

19 5. On November 21, 2011, the Reorganized Debtors filed the Reply in Support of
20 Objection to Claim No. 7.

21 6. On November 20, 2007, a Criminal Indictment Third Superseding (Dkt. No. 1671) was
22 filed in *United States v. Robert D. Kahre*, CR-S-05-121 DAE (RJJ) (D. Nevada).

23 7. On December 3, 2009, a Judgment In A Criminal Case (Dkt. No. 2615) was filed in
24 *United States v. Robert D. Kahre*, CR-S-05-121 DAE (RJJ) (D. Nevada) which found Robert Kahre
25 guilty on counts 1, 2-50, 51, 52-55, 56 and 59 of the 3rd Superseding Indictment.

26 **V. Contested Issues of Law with Concise Memorandum of Authority.**

27 The issue before the Court is whether Bravo is the employer responsible for payment of the
28 employment taxes set forth on the amended proof of claim.

Given that this Court has ordered the submission of simultaneous pre-trial legal briefs on February 13, 2012, and simultaneous reply briefs on February 27, 2012, the parties will set forth in detail their legal positions in those briefs.

VI. Log of Exhibits

The Logs of Exhibits that the parties expect to offer at trial are filed herewith.

VII. List of Witnesses, with their Addresses, Expected to Be Called.

The Reorganized Debtors expect to call the following witnesses at trial:

1. Dean Griffith

7540 Red Cinder Street, Las Vegas, NV 89131

The United States expects to call the following witnesses at trial:

1. Pamela Garner

4670 Hoeker Way, Las Vegas, NV 89147

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1 4. Marlene Marcus
2 1109 Sulpher Springs, Unit 101, Las Vegas, NV 89128
3 DATED this 26th day of January, 2012.

4 **JOHN A. DICICCO**
5 Principal Deputy Assistant Attorney General

6 /s/ Virginia Cronan Lowe
7 VIRGINIA CRONAN LOWE
8 Trial Attorney, Tax Division
9 U.S. Department of Justice

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ATTACHMENT 1

ATTACHMENT 1

Hearing Date: March 5, 2012

LBR

EXHIBITS		Case Title The Rhodes Companies, LLC, Reorganized Debtors.		BK: <u>09-14814</u>	ADV: _____
Offered	Admitted	Identification		Description	Offers Objections Rulings Exception
		#			
		1		Criminal Indictment Third Superceding filed 11/20/07 in US v. Kahre, CR-S-05-0121	
		2		Judgment in a Civil Case filed 12/03/09 in U.S. v. Kahre, CR-S-05-0121	
		3		Invoice and pay sheets bates nos. 164_D031_0192-0205	

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NV_9017(ExhibitList12-09).wpd

ATTACHMENT 2

ATTACHMENT 2

Hearing Date: March 5, 2012

LBR

Please leave the shaded areas blank for court personnel usage.

NV_9017(ExhibitList12-09).wpd